

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 99-0196**

**Sales and Use Tax  
Calendar Year 1997**

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**ISSUE(S)**

**I. Gross Retail Tax – Tools and Equipment**

**Authority:** 45 IAC 2.2-4-25; 45 IAC 2.2-4-26

Taxpayer protests the imposition of use tax on tools & equipment used on a tax-exempt job.

**STATEMENT OF FACTS**

Taxpayer is an Indiana corporation that manufactures and installs heating and cooling ducts in commercial buildings.

Taxpayer states it is not subject to use tax on its tools, ladders, and supplies that were used in the restoration of a hotel because the general contractor told them that any equipment needed for the specific job would be reimbursed by them. On the invoices that were presented to the general contractor for payment, the taxpayer listed the items purchased and added an amount due for them. The ladders, saws, etc. at the time of the audit were at the taxpayer's location. The taxpayer believes it is not responsible for the use tax on the items that the general contractor required for the job and feels that the exemption certificate that the contractor issued covered the items listed on the invoices. Audit determined that the items were needed by the taxpayer to complete the job. As stated in the regulations, all items that are used or consumed by the taxpayer are required to have use tax paid on them. Even though the general contractor reimbursed the items, the responsibility for the use tax rests with the taxpayer. The taxpayer retained possession of the equipment and small tools after he job was completed. The taxpayer would not have needed the majority of the equipment if the general contractor did not say that they would reimburse the taxpayer for it.

**I. Gross Retail Tax – Tools and equipment**

**DISCUSSION**

Taxpayer protests the use tax on tools and equipment used in the restoration of a hotel because the general contractor told them that any equipment needed for the job would be reimbursed by them and provided an exemption certificate. The cost of the tools were invoiced to the general contractor and paid by them. The tools stayed with the taxpayer.

Taxpayer bought the tools and equipment for a job; taxpayer utilized the tools, and retained the tools after the completion of the job.

45 IAC 2.2-4-26 (e) clearly states:

Utilities, machinery, tools, forms, supplies, equipment or any other items used by or consumed by the contractor and which do not become a part of the improvement to real estate are not exempt regardless of the exempt status of the person for whom the contract is performed.

**FINDING**

The taxpayer's protest is denied.